

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition for Declaratory Ruling and Request)
For Expedited Action on the July 15, 1997 Order)
of the Pennsylvania Public Utility Commission)
Regarding Area Codes 412, 610, 215, and 717)

NSD File No. L-97-42

Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 96-98

U S WEST, INC. REPLY COMMENTSI. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") agrees with those commentators arguing that the petitions for reconsideration and modification filed by state regulatory authorities "seek to overturn the central findings"¹ of the Federal Communications Commission's ("Commission" or "FCC") Pennsylvania Numbering Order.² Petitioners do so through materially overstating the extent of state regulatory authority over numbering issues prior to the issuance of the Pennsylvania Numbering Order. In conjunction with that overstatement, petitioners incorrectly argue that the Order has reduced previously-existing state sanctioned activity in

¹ SBC Communications Inc. ("SBC") at 2. Comments/oppositions filed Feb. 4, 1999.

² In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd. 19009 (1998) ("Pennsylvania Numbering Order" or "Order").

the numbering area. As demonstrated by a number of parties filing comments, petitioners' arguments are simply incorrect. Rather than taking away from the states authority that pre-existed the Pennsylvania Numbering Order, the FCC actually gave the states additional authority capable of being exercised subsequent to the issuance of the Order.³

The filed comments demonstrate the extent to which some states have previously approached area code relief with aversion.⁴ That is, in some states, such relief is not addressed in a manner where the "numbers as resources" position is given equal or serious consideration alongside the "changes in area codes is obnoxious" position.⁵ The rampant confusion over a state's prerogative with respect to area code relief and number conservation efforts has often inhibited new and creative commercial offerings that would provide additional marketplace and consumer choices. The Commission's decision eliminates this confusion, creating something of a "bright line" in this area -- a line that recent history has demonstrated is absolutely necessary.⁶

³ See AT&T Corp. ("AT&T") at 7; Bell Atlantic Mobile, Inc. ("BAM") at 15; Nextel Communications, Inc. ("Nextel") at 9; Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint Spectrum") at 2.

⁴ As the comments make clear, such is not the case in all states. In many states, the matter of area code relief is discharged responsibly. See United States Telephone Association ("USTA") at n. 6; Sprint Spectrum at 2, 25-28.

⁵ See Nextel at 1-7 (arguing that, in some states, area code relief aversion is a stronger motivator of state regulatory action than number resource administration); Vanguard at 3-4 (arguing that some states lack any goal of assuring that telephone numbers are available to consumers for services they desire but focus only on avoiding the adoption of area code relief plans). And see BAM at 3, 6-8, 10-11.

⁶ Compare SBC at 3 (arguing that, to grant the states' petitions, would allow "the

The substantive rulings and policy positions incorporated in the Commission's challenged Order represent the right end-point. In the words of SBC, the decision "promises to establish a framework for a uniform numbering system, a system that will ensure sufficient numbering resources are available for all carriers on a nondiscriminatory basis in the future."⁷ In that Order, the Commission acknowledged not only the customer irritation and annoyance at being required to change and learn new phone numbers but the resource element of numbers. That is, telephone numbers are resources that must be available to carriers to offer services in response to technological innovation and consumer demand.

It was appropriate at this time for the Commission to reassert its primary dominion over numbering administration and policy-making, making clear the extent to which authority in that area has been delegated to the states. That delegated authority is narrow in scope (i.e., involving area code assignments and relief) and prerogative (i.e., states must respond to area code relief situations and only when the relief plan has been defined and the industry cannot agree on interim rationing steps can states intervene). The Commission acted responsibly in making this clear and no new arguments are presented that suggest modification of the positions taken are warranted.⁸

confusion [to] continue").

⁷ Id. at 1.

⁸ BAM at 5 and n.5 (citing legal authority for the proposition that petitions for reconsideration are not designed for reargument of matters fully considered in the original Order); SBC at 2 (noting that all of the arguments pressed by the states in their petitions were raised and addressed in the Order).

II. U S WEST SUPPORTS CERTAIN COMMENTORS

U S WEST (including both wireline and wireless interests) supports the comments of the USTA regarding the petitions filed in this proceeding with respect to the Pennsylvania Numbering Order. That is, U S WEST opposes those petitions filed by various state regulatory authorities and support the petition filed by SBC.⁹

We also support the USTA's Appendix A, which is an attempt to take the essential "learnings" of the Pennsylvania Numbering Order and put them in a "narrative" of expected actions and reactions. The USTA is correct that adopting a process such as that articulated in the narrative would distill the essential rights and obligations incorporated in the Order into a sort of "working template" that would be beneficial to the industry and state regulatory authority.

With respect to the matter of state authority over rate center consolidations, U S WEST supports the positions of those arguing that the Pennsylvania Numbering Order in no way disturbs state authority in this area.¹⁰ Rate centers have traditionally been established at the local level through proceedings involving state regulatory commissions and incumbent carriers. They are currently being modified in such proceedings, with the additional participation of new entrants. Nothing in the Commission's Order suggests that this approach to improving number optimization has been foreclosed to the states.¹¹

⁹ USTA at 1-2.

¹⁰ AT&T at 3, 8-9; Bell Atlantic Telephone Companies ("Bell Atlantic") at 2; MCI at 19; Nextel at 12; SBC at 5; USTA at 8; Vanguard Cellular Systems, Inc. ("Vanguard") at 2, 7-9.

¹¹ In U S WEST's comments in response to the Commission's request for comment on

Finally, U S WEST supports those who argue for the continued acknowledgement of the separation of roles between state regulatory authority and numbering administration. U S WEST supports the USTA and others in their arguments that number administrators should bear the responsibility for reclaiming numbers and that states should not be permitted, in the context of other proceedings clearly under their jurisdiction, to issue orders regarding number “give backs” or reclamation.¹² While it would not be improper for such states to advise the numbering administrator of facts and circumstances which the state believes warrant a move toward reclamation,¹³ it should be left to the number administrator to engage in any actual number take back.¹⁴

numbering optimization methods, U S WEST addressed rate center consolidations as a positive option in appropriate circumstances, primarily in conjunction with the introduction of new area codes. See Comments of U S WEST Communications, Inc., In Response To Public Notice DA 98-2265, NSD File No. L-98-134, filed Dec. 21, 1998 at 27-29. And see Sprint Spectrum at 8-9.

¹² See USTA at 8-10; Nextel at 10-11; SBC at 5 (arguing that states cannot “order carriers to return numbering resources as part of implementing any rate center consolidation plan” and lack authority to “take control of the numbering resources previously assigned to [a] carrier” when dealing with decertification and certification proceedings). And see AT&T at 6-7 (arguing that while the FCC’s Pennsylvania Numbering Order only addressed state reclamation orders in the context of number pooling conservation efforts, that states lack the delegated authority to order reclamations, such authority being lodged in the North American Numbering Plan Administrator (“NANPA”) and its designees).

¹³ See Letter dated January 27, 1999 from Robert J. Hix, Public Utilities Commission, State of Colorado to Mr. Alan Hasselwander, NANC regarding a carrier’s possession of numbers assigned for areas where the carrier was not authorized to serve.

¹⁴ MCI supports the exercise of state authority over numbering resources in those instances where a carrier holding the numbers obtained the numbers unlawfully or is using the numbers in violation of state law. MCI at 15. Comments by Vanguard and Bell Atlantic suggest that these carriers might support direct state commission

III. U S WEST OPPOSES CERTAIN POSITIONS

Because U S WEST believes the Commission reached the right balance already in its Pennsylvania Numbering Order, for all the reasons outlined above, we oppose Vanguard's proposal that states be permitted to institute number rationing plans for a six-month period between the "time after jeopardy has been declared [with respect to] a specific area code, [and] before a state makes a relief plan decision."¹⁵ Vanguard does not make clear whether it proposes that a state be permitted to employ rationing based on a plan of its own, essentially bypassing altogether the FCC's requirement that a state can only act in the area of rationing if an industry consensus cannot be reached; or, if it means to suggest that any state rationing action would still be conditioned on absence of industry consensus but could be effectuated prior to the adoption of the area code relief plan.

involvement in the reclamation process, but the language of advocacy does not permit absolute clarity in this area. See Bell Atlantic at 2 (suggesting that states could order the "return" of numbers in certain circumstances but should not be able to use this authority "as a back-door way to . . . engage in number administration"); Vanguard at 8 (stating that the Order does not preclude states "from reclaiming those codes that become available as a result of rate center consolidation"). It might be that these carriers believe that states have the authority to order carriers to act so long as the action is consistent with the numbering administration structure. That is, that states can order carriers to turn over numbers to the number administrator, rather than to the state authority. However, U S WEST believes the better solution is to allow the numbering administrator to act independently in the first instance, leaving to the states the ability to petition the FCC in the event they believe the administrator is not complying with its obligations. USTA at 9-10. Alternatively, a filing directly with the FCC might be appropriate in certain cases. Compare BAM at 12 (a filing to have the FCC order the carrier to return the numbers); Sprint Spectrum at 25 (a complaint).

¹⁵ Vanguard at 6-7.

In either event, U S WEST opposes the proposal because such a ruling would only add back into the process the “pushing of the envelope”-type approach to area code relief that was all-too-present in the past and would insinuate new confusion in place of the clarity established by the Pennsylvania Numbering Order. We agree with AT&T that it would be a bad idea to provide fodder for the misguided notion that “rationing can serve as a number management tool.”¹⁶ “Rationing is . . . a stop-gap measure”¹⁷ and something to be avoided, if at all possible, within the context of area code relief planning. Granting authority to implement rationing on a fairly routine basis even after a jeopardy stage has been reached is totally inappropriate. As AT&T states, better planning is the solution -- not incorporating a persistent rationing plan element into the rules and processes.¹⁸

We also oppose the MCI proposal that the Commission clarify that not all details of an area code relief plan need to be committed to writing before a state can act.¹⁹ The requested relief is both facile and unnecessary. Beyond stating the proposition, MCI provides little analysis of its meaning. It states that the essential elements of an area code relief plan would have to be determined (specifically, a “date and method of implementation”)²⁰ before a state could proceed to rationing,

¹⁶ AT&T at 10.

¹⁷ Id. And see BAM at 6.

¹⁸ Id. at 11.

¹⁹ MCI WorldCom, Inc. (“MCI”) at 2, (arguing that the FCC should make clear that a state need not “wait until all details of its NPA relief plans are finalized before exercising authority to limit premature NXX depletion through rationing or allocation”). And see id. at 5, 10, 17-18 (to the same effect).

²⁰ Id. at 17 (also stated as “a date of relief and a proposed method of relief”), 18 (and

but not all the details would have to be disclosed or resolved. However, it never demonstrates an existing requirement that all the details be disclosed or resolved.

The first issue with MCI's proposal, then, is whether there is any clarification or modification necessary since there is no mandate on the matter. U S WEST believes that most regulators would be guided by a "substantial completion" standard, similar to that which creates rights and obligations under contract law, regardless of any Commission clarification in this area. For this reason alone, we oppose the suggestion.

Moreover, however, MCI never acknowledges that the state authority to ration is, in the first instance, a "backup" authority. That is, it only comes into play -- if at all -- if the industry consensus process breaks down. For this reason, the "standard" associated with when a state can, or cannot, act in the rationing area is a subsidiary one to the more critical question associated with the authority to act at all. Thus, while the MCI proposal seems -- at first glance -- to be palliative, it really is unnecessary and of little benefit either to regulators, the industry or consumers.

IV. CONCLUSION

In conclusion, U S WEST urges the Commission to reject those petitions arguing that the Pennsylvania Numbering Order constitutes some radical

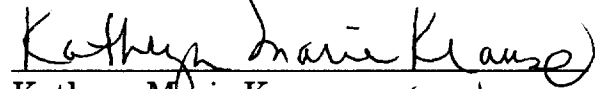
"that a date and implementation method be selected"). Compare BAM at 5, paraphrasing the FCC's Order, remarking that state commissions are precluded from ordering area code rationing until after they "have decided on a specific form of area code relief and have set an implementation date." In essence, BAM reads the FCC's Order to require basically the essentials that MCI claims should be the predicate for moving to consideration of rationing. BAM's remarks (as well as the relevant rule language at 47 CFR § 52.19(a)) demonstrate that no further clarification in this area is necessary.

departure from prior law in the area of number administration. That Order does not depart from the elevation of the FCC to a position of preeminence in the area of numbering administration already articulated in prior FCC Orders, a position supported by sound numbering policy and statutory authority. Nor does the Order deprive states of participation in the pursuit of number optimization. Both regulatory authorities have a role to play in the process. The Pennsylvania Numbering Order simply operates to articulate those roles. Since it does so in a manner consistent with federal law, public policy and common sense, it should not be modified.²¹

Respectfully submitted,

U S WEST, INC.

By:


Kathryn Marie Krause (KS)
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Its Attorney

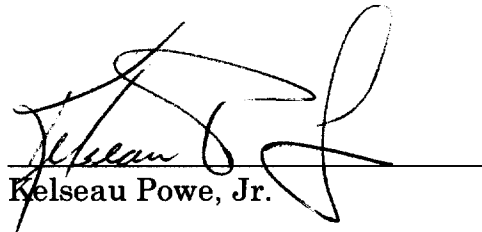
Of Counsel,
Dan L. Poole

February 18, 1999

²¹ Contrary to MCI's argument regarding the essential link between the filed petitions and the number optimization proceeding (MCI at 2, 4-5, arguing that the two proceedings should be disposed of on an integrated basis), the Commission need not delay acting to reject the petitions until it has completed its analysis in the number optimization proceeding. While the latter proceeding may result in some additional state actions being deemed permissible, neither law nor policy suggest that holding the current petitions in abeyance is prudent. The clarity to be gained by acting promptly on the petitions can only operate to the benefit of carriers and customers alike.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 18th day of February, 1999, I have caused a copy of the foregoing **U S WEST COMMUNICATIONS, INC. REPLY COMMENTS** to be served, via first class United States mail, postage pre-paid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

*Served via hand delivery

***William E. Kennard**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Gloria Tristani**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Michael K. Powell**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Harold Furchtgott-Roth**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Lawrence E. Strickling**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Anna Gomez**
Federal Communications Commission
Room 235
2000 M Street, N.W.
Washington, DC 20554

***Jeannie Grimes**
Federal Communications Commission
Room 235
2000 M Street, N.W.
Washington, DC 20554

***Kris Monteith**
Federal Communications Commission
Room 230
2000 M Street, N.W.
Washington, DC 20554

***Dave Ward**
Federal Communications Commission
Room 230
2000 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Janet Gail Besser
James Connelly, *et al*
Commonwealth of Massachusetts
Department of Telecommunications and
Energy
12th Floor
100 Cambridge Street
Boston, MA 02202

Charles D. Gray
James B. Ramsey
National Association of
Regulatory Utility Commissioners
Suite 603
1100 Pennsylvania Avenue, N.W.
POB 684
Washington, DC 20044-0684

Peter Arth, Jr.
Lionel B. Wilson
Helen M. Mickiewicz
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

E. Barclay Jackson
New Hampshire Public
Utilities Commission
8 Old Suncook Road
Concord, NH 03301

Adriene G. Southgate
Rhode Island Public
Utilities Commission
100 Orange Street
Providence, RI 02901

Robert M. Lynch
Roger K. Toppins
Hope Thurrott
John S. diBene
SBC Communications Inc.
Room 3023
One Bell Plaza
Dallas, TX 75202

Douglas Fraser
Natural Resources Division
POB 12548
Capitol Station
Austin, TX 78711-2548

Thomas C. Hunter
Lynda Hymans
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, TX 78711

Maryanne Reynolds Martin
Amy L. Putman
James J. McNulty
Pennsylvania Public Utility Commission
POB 3265
Harrisburg, PA 17105

Jerome F. Candelaria
California Cable Television Association
4341 Piedmont Avenue
Oakland, CA 94611

Mark Fogelman
Steeffel, Levitt & Weiss
30th Floor
One Embarcadero Center
San Francisco, CA 94111

CCT

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
Suite 610
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006

Anthony Marquez
Colorado Public Utilities Commission
Office Level 2
1580 Logan Street
Denver, CO 80203

Jonathan M. Chambers
Sprint PCS
Suite M112
1801 K Street, N.W.
Washington, DC 20006

Joseph Assenzo
Elizabeth McJimsey
Jeffrey M. Pfaff
Sprint PCS
12th Floor
4900 Main
Kansas City, MO 64112

Mary DeLuca
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Glenn B. Manishin
Lisa N. Anderson
Blumenfeld & Cohen
Suite 700
1615 M Street, N.W.
Washington, DC 20036

MCI

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

J. G. Harrington
Laura S. Roecklein
Dow, Lohnes & Albertson, PLLC
Suite 800
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

VANGUARI

Howard J. Symons
Sara F. Seidman
Amy Bushyeager
Mintz, Levin, Cohn, Ferris
Glovsky & Popeo, PC
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

AT&T

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.
AT&T Corp.
Room 3247H3
295 North Maple Avenue
Basking Ridge, NJ 07920

Douglas I. Brandon
AT&T Corp.
Suite 400
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Martin C. Rothfelder
Nathan T. Foose
The Rothfelder Law Offices
625 Central Avenue
Westfield, NJ 07090

NEXTEL

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications
Industry Association
Suite 800
1250 Connecticut Avenue, N.W.
Washington, DC 20036

John T. Scott III
Crowell & Moring, LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

BAMI

John M. Goodman
Michael E. Glover
Bell Atlantic Telephone Companies
1300 I Street, N.W.
Washington, DC 20005

John F. Raposa
GTE Service corporation
HQE03J27
600 Hidden Ridge
POB 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Matt Berns
Focal Communications Corporation
1120 Vermont Avenue, N.W.
Washington, DC 20005

Lawrence G. Malone
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350

Benjamin H. Dickens
Gerard J. Duffy
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Washington, DC 20037

OMNIPAIN

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